

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the **Board of Vocational Nursing and Psychiatric Technicians** (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Engineers Board Hearing Room, 2535 Capitol Oaks Drive (Third Floor), Sacramento, CA 95833 at 10:00 A.M. on Wednesday, December 20, 2006.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 P.M. on Tuesday, December 19, 2006, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 125.9, 148, 2854, and 4504 of the Business and Professions (B&P) Code, and to implement, interpret or make specific sections 101.6, 108, 2859, 2875, 2876, 2878, 2878.1, 2878.5, 4502, 4503, 4517, 4520, 4521, and 4521.2 of said Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to B&P Code section 2854 (Vocational Nursing); and B&P Code section 4504 (Psychiatric Technicians), the Board may adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry out the provisions of these chapters.

Legislation established by Chapter 640, Statutes of 2003 (SB 358, Figueroa), requires licensed vocational nurses (LVNs), psychiatric technicians (PTs), and their employers to report known violations of the act to the Board effective January 1, 2004. The legislation specified that a licensee who fails to report this information to the Board may have his or her license suspended or revoked for unprofessional conduct. This legislation also requires a licensee's employer to report to the Board any suspension or termination for cause of a licensee. The legislation makes employers who fail to make a report subject to an administrative fine.

This proposal will implement and make specific the mandatory reporting requirements by specifying when, how, and under what conditions a licensee or employer must report. It will also specify the consequences for failure to make a report to the Board and it will make other conforming changes to the Board's regulations.

Additionally, the Board has existing authority to issue licensees a citation and fine pursuant to Business and Professions Code section 125.9 and existing regulations. Chapter 788, Statutes of 2003 (SB 362, Figueroa) increased the maximum amount of the administrative fine that may be assessed in a citation to \$5,000. This proposal would make conforming changes to the Board's regulations. This proposal will also delete acts designated as exceptions from the citation process and will amend the appeal procedure for a citation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

It is anticipated that there will be additional expenditures of approximately \$861,000 in the 2007/08 State Fiscal Year (\$744,000 Vocational Nursing Program; \$117,000 Psychiatric Technician Program) and \$739,000 in the 2008/09 State Fiscal Year (\$649,000 Vocational Nursing Program; \$90,000 Psychiatric Technician Program).

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed amendments do not alter staffing or equipment needs in any small business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determination at the hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Michele Hedding, Associate Governmental Program Analyst
Address:	2535 Capitol Oaks Drive, Suite 205 Sacramento, CA 95833
Telephone No.:	(916) 263-7848
Fax No.:	(916) 263-7859
E-Mail Address:	michele_hedding@dca.ca.gov

The backup contact person is:

Name:	Cheryl Anderson, Nursing Education Consultant
Address:	2535 Capitol Oaks Drive, Suite 205 Sacramento, CA 95833
Telephone No.:	(916) 263-7839
Fax No.:	(916) 263-7859
E-Mail Address:	cheryl_anderson@dca.ca.gov

Website Access – Materials regarding this proposal can be found at www.bvnpt.ca.gov.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

VOCATIONAL NURSING REGULATIONS

California Code of Regulations, Title 16, Division 25, Chapter 1:

Amend Section §2518.6. Performance Standards.

- (a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions ~~which~~ that include but are not limited to the following:
 - (1) Reporting to the board ~~unprofessional conduct as defined~~ acts specified in Sections ~~2878(a)~~ 2878.5 of the Business and Professions Code;
 - (2) Documenting patient/client care in accordance with standards of the profession; and
 - (3) Performing services in accordance with Section 125.6 of the Business and Professions Code.
- (b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:
 - (1) Maintaining current knowledge and skills for safe and competent practice;
 - (2) Maintaining patient/client confidentiality;
 - (3) Maintaining professional boundaries with the patient/client; ~~and~~
 - (4) Abstaining from chemical/substance abuse; and
 - (5) Cooperating with the board during investigations as required by Section 2878.1 of the Business and Professions Code.
- (c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

NOTE: Authority cited: Sections 2854, Business and Professions Code. Reference: Sections 101.6, 108, 2859, 2878, 2878.1, and 2878.5, Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Adopt Section §2520.4 Licensee Mandatory Reporting.

A licensed vocational nurse shall report, in writing, to the board the commission of any act by another person that constitutes unprofessional conduct as specified in Business and Professions Code Sections 2878, 2878.1 and 2878.5. The report shall be made to the board within 30 calendar days from the date the licensee knows that a violation occurred. Failure to make a report to the board as required by this section shall constitute unprofessional conduct within the meaning of Business and Professions Code, Section 2878.

NOTE: Authority cited: Sections 2854, Business and Professions Code. Reference: Sections 2859, 2878, 2878.1, and 2878.5, Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Adopt Section §2520.5. Employer Mandatory Reporting.

Employers of licensed vocational nurses shall report, in writing, to the board the suspension or termination for cause of any licensed vocational nurse in its employ. The report shall be made within 30 calendar days from the effective date of the suspension, termination or resignation. Failure to make a report to the board as required under this section shall constitute a violation of Business and Professions Code, Section 2878.1.

NOTE: Authority cited: Sections 2854, Business and Professions Code. Reference: Sections 2859, 2878, 2878.1, and 2878.5, Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Amend Section §2523. Citations and Fines – Content and Service.

- (a) The executive officer of the board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the board pursuant thereto.

- (b) The executive officer of the board or his or her designee may issue a citation which may contain an administrative fine against any employer of a licensed vocational nurse who fails to report a suspension or termination for cause of that licensee as specified in Section 2878.1 of the Business and Professions Code. For purposes of this article, “cited person” includes a cited employer.
- (~~b~~c) Each citation shall be in writing, shall indicate the classification of the citation, and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.
- (~~e~~d) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation or both.
- (~~d~~e) The citation shall inform the cited person of the right to an informal conference concerning the matter and of the right to an administrative hearing.
- (~~e~~f) The citation shall be served upon the cited person personally or by certified and regular mail.

NOTE: Authority cited: Sections 125.9, 148, 2854, Business and Professions Code. Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

Repeal Section §2523.1. Exceptions.

~~A citation shall not be issued in any of the following circumstances:~~

- (a) ~~—The violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection.~~
- (b) ~~—The licensee's conduct displayed a conscious disregard for the patient and/or the patient's rights. This includes but is not limited to physical abuse; neglect; fiduciary abuse (as defined in the Welfare and Institutions Code); or the deprivation of care or services which are necessary to avoid physical harm or mental suffering.~~

- ~~(c) — The licensee failed to comply with any requirement of any previous citation, including any order of abatement or fine.~~
- ~~(d) — The licensee has been previously disciplined by the board or has previously been denied a license by the board for the same or similar actions.~~
- ~~(e) — The violation involves unprofessional conduct related to controlled substances or dangerous drugs.~~
- ~~(f) — The violation involves unprofessional conduct related to sexual abuse, misconduct, or relations with a patient.~~
- ~~(g) — The licensee was convicted of an offense substantially related to the qualifications, functions, and duties of a licensed vocational nurse and there is insufficient evidence of rehabilitation.~~

NOTE: Authority cited: Sections 125.9, 148, and 2854, Business and Professions Code.
Reference: Sections 125.9, 148, and 2878, Business and Professions Code.

Amend Section §2523.2. Violation Classifications.

- (a) There shall be ~~two~~ three classes of violations:
 - (1) Class "A", ~~and~~;
 - (2) Class "B"; and
 - (3) Class "C."
- (b) In determining the violation class, the following factors shall be considered:
 - (1) Nature and severity of the violation.
 - (2) Length of time that has passed since the date of the violation.
 - (3) Consequences of the violation, including potential or actual patient harm.
 - (4) History of previous violations of the same or similar nature.
 - (5) Evidence that the violation was willful.
- (c) The fine for each Class "A" violation shall not exceed \$10,000 per violation. A Class "A" violation is the failure of an employer to report to the board, as

specified in Section 2520.5, the suspension or termination for cause of a licensed vocational nurse.

(~~e~~d) The fine for each ~~e~~Class "AB" violation shall be not less than \$1,001 nor more than \$2,500. A ~~e~~Class "AB" violation includes:

- (1) A violation ~~which~~ that ~~resulted~~ in or could have resulted in patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include but are not limited to patient abandonment and falsifying nursing notes.
- (2) Any violation ~~which~~ that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain or fraud.
- (3) A minor or technical violation ~~which~~ that continues for six months or more in duration; or
- (4) A minor or technical violation with one or more Class "BC" citations.

(~~d~~e) The fine for each ~~e~~Class "BC" violation shall not exceed \$1,000. A ~~e~~Class "BC" violation is a minor or technical violation ~~which~~ that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care and which continues for less than six months duration. Such violations include but are not limited to practicing with an expired license, precharting, charting errors, or verbal abuse.

(f) Notwithstanding the administrative fine amounts specified in subsections (d) and (e), a citation may include a fine of no more than \$5,000 if one or more of the following circumstances apply:

- (1) The cited person has a history of two or more prior citations of the same or similar violations.

- (2) The citation involves a violation that has a substantial risk to the health and safety of another person.
- (3) The citation involves multiple violations that demonstrate a willful disregard of the law.
- (4) The citation involves a violation perpetrated against an elder, disabled, or dependent person.

NOTE: Authority cited: Sections 125.9, 148, and 2854, Business and Professions Code.
Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

Amend Section §2523.5. Contested Citations.

- (a) ~~In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the Code, t~~The cited person may, within 14 calendar days after service of the citation, submit a written request for an informal citation review with the executive officer or his/her designee. A request for a citation review shall be deemed a request for an administrative hearing.
- (b) The executive officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the cited person ~~cited~~ and his/her legal counsel or authorized representative, if desired.
- (c) The executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine or order of abatement, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference.
- (d) If the citation is dismissed during the informal conference, any request for an administrative hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process request an

administrative hearing within the time frame provided by section 125.9 of the Code. The request for an administrative hearing shall be in writing.

- (e) The failure of a cited person to appear for a scheduled informal citation review conference shall be deemed a withdrawal of any request for an administrative hearing if the board sends written notice to the cited person of that consequence and the cited person does not inform the board otherwise, in writing, within 10 calendar days of the notice.
- (f) In addition to the appeal rights in (a) through (e) above, the cited person may request an administrative hearing provided for in subdivision (b)(4) of Section 125.9 of the Code within 30 days of the date of issuance of the citation or assessment.

NOTE: Authority cited: Sections 125.9, 148, and 2854, Business and Professions Code.
Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

Amend Section §2523.6. Compliance with Citation - Order of Abatement.

- (a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, then he/she may request from the executive officer or his/her designee an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.
- (b) If a citation is not contested, or if the order is appealed and the cited person ~~cited~~ does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

- (c) Failure to timely comply with an order of abatement or pay an assessed fine may result in ~~disciplinary~~ further action being taken by the board which may include discipline against a licensee, or other appropriate judicial relief being taken against the person cited.
- (d) If a fine issued to a licensee is not paid after a citation has become final, the fine shall be added to the cited person's license renewal fee. A license shall not be renewed without payment of the renewal fee and fine.

NOTE: Authority cited: Sections 125.9, 148, and 2854, Business and Professions Code.
Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

PSYCHIATRIC TECHNICIAN REGULATIONS

California Code of Regulations, Title 16, Division 25, Chapter 2:

Amend Section §2576.6. Performance Standards.

- (a) A licensed psychiatric technician shall safeguard patients'/clients' health and safety by actions ~~which~~ that include but are not limited to the following:
 - (1) Reporting to the board ~~unprofessional conduct as defined~~ acts specified in Sections 4521~~(a)~~ of the Business and Professions Code;
 - (2) Documenting patient/client care in accordance with standards of the profession; and
 - (3) Performing services in accordance with Section 125.6 of the Business and Professions Code.
- (b) A licensed psychiatric technician shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:
 - (1) Maintaining current knowledge and skills for safe and competent practice;
 - (2) Maintaining patient/client confidentiality;
 - (3) Maintaining professional boundaries with the patient/client; ~~and~~
 - (4) Abstaining from chemical/substance abuse; and
 - (5) Cooperating with the board during investigations as required by Section 4521.2 of the Business and Professions Code.
- (c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

NOTE: Authority cited: Sections 4504, Business and Professions Code. Reference: Sections 101.6, 108, 4502, 4503, 4517, 4520, 4521, and 4521.2(a), Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Adopt Section §2577.5. Licensee Mandatory Reporting.

A psychiatric technician shall report, in writing, to the board the commission of any act by another person that constitutes unprofessional conduct as specified in Business and Professions Code Sections 4521 and 4521.2. The report shall be made to the board within 30 calendar days from the date the licensee knows that a violation occurred. Failure to make a report to the board as required by this section shall constitute unprofessional conduct within the meaning of Business and Professions Code, Section 4521.

NOTE: Authority cited: Sections 4504, Business and Professions Code. Reference: Sections 101.6, 108, 4502, 4503, 4517, 4520, 4521, and 4521.2(a), Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Adopt Section §2577.6. Employer Mandatory Reporting.

Employers of psychiatric technicians shall report, in writing, to the board the suspension or termination for cause of any psychiatric technician in its employ. The report shall be made within 30 calendar days from the effective date of the suspension, termination or resignation. Failure to make a report to the board as required by this section shall constitute a violation of Business and Professions Code, Section 4521.2.

NOTE: Authority cited: Sections 4504, Business and Professions Code. Reference: Sections 101.6, 108, 4502, 4503, 4520, 4521, and 4521.2(b), Business and Professions Code; Section 11166, Penal Code; and Section 15630(a), Welfare and Institutions Code.

Amend Section §2579.2. Citations and Fines - Content and Service.

- (a) The executive officer of the board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the board pursuant thereto.

- (b) The executive officer of the board or his or her designee may issue a citation which may contain an administrative fine against any employer of a psychiatric technician who fails to report a suspension or termination for cause of that licensee as specified in Section 4521.2 of the Business and Professions Code. For purposes of this article, “cited person” includes a cited employer.
- (~~b~~c) Each citation shall be in writing, shall indicate the classification of the citation, and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.
- (~~e~~d) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation or both.
- (~~d~~e) The citation shall inform the cited person of the right to an informal conference concerning the matter and of the right to an administrative hearing.
- (~~e~~f) The citation shall be served upon the cited person personally or by certified and regular mail.

NOTE: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code.
Reference: Sections 125.9, 148, 4521, and 4521.2, Business and Professions Code.

Repeal Section §2579.3. Exceptions.

~~A citation shall not be issued in any of the following circumstances:~~

- (a) ~~—The violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection.~~
- (b) ~~—The licensee's conduct displayed a conscious disregard for the patient and/or the patient's rights. This includes but is not limited to physical abuse; neglect; fiduciary abuse (as defined in the Welfare and Institutions Code); or the deprivation of care or services which are necessary to avoid physical harm or mental suffering.~~

- ~~(c) — The licensee failed to comply with any requirement of any previous citation, including any order of abatement or fine.~~
- ~~(d) — The licensee has been previously disciplined by the board or has previously been denied a license by the board for the same or similar actions.~~
- ~~(e) — The violation involves unprofessional conduct related to controlled substances or dangerous drugs.~~
- ~~(fe) — The violation involves unprofessional conduct related to sexual abuse, misconduct, or relations with a patient.~~
- ~~(g) — The licensee was convicted of an offense substantially related to the qualifications, functions, and duties of a licensed psychiatric technician and there is insufficient evidence of rehabilitation.~~

NOTE: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code.
Reference: Sections 125.9, 148, and 4521, Business and Professions Code.

Amend Section §2579.4. Violation Classifications.

- (a) There shall be ~~two~~ three classes of violations:
 - (1) Class "A"; ~~and;~~
 - (2) Class "B"; and
 - (3) Class "C."
- (b) In determining the violation class, the following factors shall be considered:
 - (1) Nature and severity of the violation.
 - (2) Length of time that has passed since the date of the violation.
 - (3) Consequences of the violation, including potential or actual patient harm.
 - (4) History of previous violations of the same or similar nature.
 - (5) Evidence that the violation was willful.
- ~~(c) The fine for each Class "A" violation shall not exceed \$10,000 per violation. A Class "A" violation is the failure of an employer to report to the~~

board, as specified in Section 4521.2, the suspension or termination for cause of a psychiatric technician.

(~~ed~~) The fine for each eClass "AB" violation shall be not less than \$1,001 nor more than \$2,500. A eClass "AB" violation includes:

(1) A violation ~~which~~ that ~~resulted~~ in or could have resulted in patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include but are not limited to patient abandonment and falsifying nursing notes.

(2) Any violation ~~which~~ that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain.

(3) A minor or technical violation ~~which~~ that continues for six months or more in duration; or

(4) A minor or technical violation with one or more Class "BC" citations.

(~~de~~) The fine for each eClass "BC" violation shall not exceed \$1,000. A eClass "BC" violation is a minor or technical violation ~~which~~ that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care and which continues for less than six months duration. Such violations include but are not limited to practicing with an expired license, precharting, charting errors, or verbal abuse.

(f) Notwithstanding the administrative fine amounts specified in subsections (d) and (e), a citation may include a fine of no more than \$5,000 if one or more of the following circumstances apply:

(1) The cited person has a history of two or more prior citations of the same or similar violations.

- (2) The citation involves a violation that has a substantial risk to the health and safety of another person.
- (3) The citation involves multiple violations that demonstrate a willful disregard of the law.
- (4) The citation involves a violation perpetrated against an elder, disabled or dependent person.

NOTE: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code.
Reference: Sections 125.9, 148, 4521, and 4521.2, Business and Professions Code.

Amend Section §2579.7. Contested Citations.

- (a) ~~In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the Code, t~~The cited person may, within 14 calendar days after service of the citation, submit a written request for an informal citation review with the executive officer or his/her designee. ~~A request for a citation review shall be deemed a request for an administrative hearing.~~
- (b) The executive officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the cited person ~~cited~~ and his/her legal counsel or authorized representative, if desired.
- (c) The executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine or order of abatement, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference.
- (d) If the citation is dismissed during the informal conference, any request for an administrative hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, ~~in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process~~ request an

administrative hearing within the time frame provided by section 125.9 of the Code. The request for an administrative hearing shall be in writing.

- (e) The failure of a cited person to appear for a scheduled informal citation review conference shall be deemed a withdrawal of any request for an administrative hearing if the board sends written notice to the cited person of that consequence and the cited person does not inform the board otherwise, in writing, within 10 calendar days of the notice.
- (f) In addition to the appeal rights in (a) through (e) above, the cited person may request an administrative hearing provided for in subdivision (b)(4) of Section 125.9 of the Code within 30 days of the date of issuance of the citation or assessment.

NOTE: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code.
Reference: Sections 125.9, 148, 4521, and 4521.2, Business and Professions Code.

Amend Section §2579.8. Compliance with Citation - Order of Abatement.

- (a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, then he/she may request from the executive officer or his/her designee an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.
- (b) If a citation is not contested, or if the order is appealed and the cited person ~~cited~~ does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.
- (c) Failure to timely comply with an order of abatement or pay an assessed fine may result in ~~disciplinary~~ further action being taken by the board, which may include

discipline against a licensee or other appropriate judicial relief being taken against the person cited.

- (d) If a fine issued to a licensee is not paid after a citation has become final, the fine shall be added to the cited person's license renewal fee. A license shall not be renewed without payment of the renewal fee and fine.

NOTE: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code.
Reference: Sections 125.9, 148, 4521, and 4521.2, Business and Professions Code.

(10/24/06)

Board of Vocational Nursing and Psychiatric Technicians

INITIAL STATEMENT OF REASONS

Hearing Date: December 20, 2006

Subject Matter of Proposed Regulations:

Mandatory Reporting; Citations and Fines

Sections Affected:

Vocational Nursing (VN): Adopt Sections 2520.4 and 2520.5
 Amend Sections 2518.6, 2523, 2523.2, 2523.5, and 2523.6
 Repeal Section 2523.1

Psychiatric Technician (PT): Adopt Sections 2577.5 and 2577.6
 Amend Sections 2576.6, 2579.2, 2579.4, 2579.7, and
 2579.8
 Repeal Section 2579.3

Mandatory Reporting and Citations & Fines
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Specific Purpose

As explained in detail below, the purpose of the proposed regulations to adopt language necessary to implement, interpret, and make specific requirements of new legislation, Chapter 640, Statutes of 2003 (SB 358, Figueroa), relative to mandatory reporting for licensed vocational nurses (LVNs), psychiatric technicians (PTs), and their employers. The Board requires these regulations to enforce the law.

Additionally, pursuant to new statutory requirements set forth in Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003), the proposed regulatory language increases the amount of fine that may be assessed for LVNs and PTs under specified circumstances.

Amend Sections 2518.6 (VN); 2576.6 (PT) Performance Standards

Existing language specifies performance standards for licensed vocational nurses and psychiatric technicians. As set forth therein, licensees are required to report to the Board unprofessional conduct as defined in Business and Professions Code Sections 2878 and 4521.

New statutory language set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003) requires licensed vocational nurses and psychiatric technicians to report the commission of any act prohibited by Sections 2878 and 4521 of the Business and Professions Code and to cooperate with the Board in the investigation of those acts. The proposed amendments make specific the reporting of those acts as a performance standard by referencing the new law.

Adopt Sections 2520.4 (VN); 2577.5 (PT) Licensee Mandatory Reporting

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language specifies that failure by a licensed vocational nurse or psychiatric technician to report instances of unprofessional conduct by another person within 30 calendar days constitutes unprofessional conduct.

Adopt Sections 2520.5 (VN); 2577.6 (PT) Employer Mandatory Reporting

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language specifies that failure by employers of licensed vocational nurses and psychiatric technicians to report to the Board the suspension or termination for cause of a licensed vocational nurse or a psychiatric technician within 30 calendar days from the suspension, termination or resignation constitutes a violation.

Amend Sections 2523(VN); 2579.2 (PT) Citations and Fines – Content and Service

Existing regulatory language authorizes the executive officer to issue citations to licensed vocational nurses and psychiatric technicians. Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed amendments authorize the issuance of citations to employers of licensed vocational nurses and psychiatric technicians for failure to report the suspension or termination for cause of a licensee.

Repeal Sections 2523.1 (VN); 2579.3 (PT) Exceptions

Existing regulatory language sets forth violations for which citations may not be issued. These exceptions include, but are not limited to, violations involving unprofessional conduct related to controlled substances, dangerous drugs, abandonment, prior disciplinary action for same or similar actions, and convictions for which sufficient evidence of rehabilitation has not been demonstrated. Some of these violations are not of a gravity that would warrant formal disciplinary action (suspension, revocation or probation of a license). Examples include, but are not limited to, precharting the administration of a controlled substance, a single instance in which the licensee failed to perform a treatment at a scheduled time, failed to document the effect of an administered medication, or failed to document the route by which a prescribed medication was administered.

The proposed deletions repeal these exceptions to facilitate a more expeditious and cost-effective resolution of violations that do not warrant formal disciplinary action or civil or criminal action by the district attorney or the Attorney General.

Amend Sections 2523.2 (VN); 2579.4 (PT) Violation Classifications

Existing regulatory language establishes two classes of citations for licensed vocational nurses and psychiatric technicians. Additionally, existing language specifies criteria that must be considered in determining the class of a citation.

Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language establishes a third classification of citation

that may be issued to employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

Additionally, pursuant to new statutory requirements set forth in Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003), the proposed regulatory language increases the amount of civil penalty that may be assessed for licensed vocational nurses and psychiatric technicians under specified circumstances.

Amend Sections 2523.5 (VN); 2579.7 (PT) Contested Citations

Existing regulatory language delineates the procedure that must be followed when an issued citation is contested by a licensed vocational nurse or psychiatric technician. Pursuant to new statutory requirements set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed regulatory language adds employers of licensed vocational nurses and psychiatric technicians. The proposal also clarifies the process for requesting an administrative hearing to contest the citation. Clean up and grammatical changes are also made.

Amend Sections 2523.6 (VN); 2579.8 (PT) Compliance with Citation – Order of Abatement

Existing regulations clarify procedures for compliance with citations and orders of abatement issued to licensed vocational nurses and psychiatric technicians. Pursuant to new statutory language set forth in Senate Bill 358 (Figueroa, Chapter 640, Statutes of 2003), the proposed language adds employers of licensed vocational nurses and psychiatric technicians. Clean up and grammatical changes are also made.

Factual Basis:

In accordance with the Business and Professions Code, the protection of the health, safety, and welfare of California consumers is the Board's highest priority. The Board is authorized to investigate allegations of unprofessional conduct and unsafe, incompetent practice by licensed vocational nurses and psychiatric technicians. If allegations are substantiated, the Board is authorized to discipline such licensees.

A significant number of licensees willfully fail to report unprofessional conduct or to respond and cooperate with investigatory requests. Such actions by licensees and the lack of reporting violations by employers pose a clear danger to the health and safety of consumers.

Recent legislation corrects this. Chapter 640, Statutes of 2003 (SB 358, Figueroa), was signed and chaptered by the Secretary of State on October 1, 2003. This new statute requires licensed vocational nurses and psychiatric technicians to report violations of the Vocational Nursing Practice Act and Psychiatric Technicians Law. This new statute also requires employers of licensed vocational nurses and psychiatric technicians to report suspensions and terminations of licensees for cause.

This proposal will implement and make specific the mandatory reporting requirements by specifying when, how, and under what conditions a licensee or employer must report. It will specify the consequences for failure to make a report to the Board. This proposal will also delete acts designated as exceptions from the citation process and amend the appeal procedure for a citation.

Additionally, Chapter 788, Statutes of 2003 (SB 362, Figueroa) became effective January 1, 2004 and statutorily increased the amount of fine that may be assessed for licensed vocational nurses and psychiatric technicians under specified circumstances. The proposed regulations comply with the new statute.

Underlying Data

SB 358 (Figueroa, Chapter 640, Statutes of 2003) – Mandatory Reporting Requirements. Signed by Governor Gray Davis on September 30, 2003 and filed with the Secretary of State's Office on October 1, 2003. The new law became effective January 1, 2004.

SB 362 (Figueroa, Chapter 788, Statutes of 2003) – Citation and Fine. Signed by Governor Arnold Schwarzenegger on October 10, 2003 and filed with the Secretary of State's Office on October 11, 2003. The new law became effective January 1, 2004.

Minutes of the September 8, 2006, Board Meeting and Board Meeting Report.

Minutes of the October 19, 2006, Pre-Notice Forum.

Business Impact

The regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the premise that employers of licensed vocational nurses and psychiatric technicians will comply with the mandatory reporting requirement.

Specific Technologies or Equipment

These regulations do not mandate the use of special technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

(10/24/2006)